

COLE V. MULLEN

IBLA 79-380

Decided September 24, 1979

Appeal from decision of the Montana State Office declaring mining claim null and void ab initio. M MC 17213.

Affirmed.

1. Mining Claims: Lands Subject to

Land which has been patented without a reservation of minerals to the United States is not available for the location of mining claims, and mining claims located on such land after it is so patented are null and void ab initio.

APPEARANCES: Cole V. Mullen, pro se.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

This appeal is from a decision dated April 11, 1979, by the Montana State Office, Bureau of Land Management (BLM), declaring appellant's Shirley Ann lode mining claim null and void ab initio.

With his recordation documents, appellant submitted a diagram (map) showing his claim to be located in the NW 1/4 of sec. 32, T. 13 N., R. 5 W., Principal meridian. The decision appealed from states that this portion of sec. 32 was patented without a reservation of minerals to the United States and was therefore not subject to the location of mining claims under the 1872 Mining Law.

Appellant states on appeal that the claim in question is located "between the Placer Claims, Purple Nugget and Theresa Ann . . . which is located (Sic) on the same BLM land." Appellant states that there may have been an error in pinpointing the location on the map.

[1] Although appellant asserts that the claim might be inaccurately shown on the map, he does not controvert BLM's statement that

the lands in the subject quarter section were patented without mineral reservation to the United States, Patent No. 894888.

Mining claims may only be located on lands open to the operation of the United States mining laws. Land which has been patented without a reservation of minerals to the United States is not available for the location of mining claims. John F. Drobnick, 41 IBLA 164 (1979); see Solicitor's Opinion, M-36279 (July 19, 1955). Mining claims located on such land after it is so patented are null and void ab initio. E.g., J. P. Hinds, 25 IBLA 67, 70; 83 I.D. 275, 276 (1976).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision below is affirmed.

Frederick Fishman
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

